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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 RAUL F.G.,<sup>1</sup>

12 Plaintiff

13 v.

14 ANDREW M. SAUL, Commissioner  
15 of Social Security,<sup>2</sup>

16 Defendant.  
17

Case No. 8:18-cv-01082-GJS

**MEMORANDUM OPINION AND  
ORDER**

18 **I. PROCEDURAL HISTORY**

19 Plaintiff Raul F.G. filed a complaint seeking review of the decision of the  
20 Commissioner of Social Security denying his application for Disability Insurance  
21 Benefits (“DIB”). The parties filed consents to proceed before the undersigned  
22 United States Magistrate Judge [Dkts. 8 and 19] and briefs addressing disputed  
23 issues in the case [Dkt.13 (“Pl. Br.”), Dkt. 18 (“Def. Br.”), Dkt. 21 (“Pl. Reply”)].  
24 The matter is now ready for decision. For the reasons discussed below, the Court  
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26 <sup>1</sup> In the interest of privacy, this Order uses only the first name and the initial of  
27 the last name of the non-governmental party.

28 <sup>2</sup> Andrew M. Saul, now Commissioner of the Social Security Administration, is  
substituted as defendant for Nancy A. Berryhill. *See* Fed. R. Civ. P. 25(d).

1 finds that this matter should be affirmed.

## 3 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

4 Plaintiff filed an application for DIB alleging disability since May 19, 2010,  
5 based primarily on left and right knee impairment and a right arm impairment.  
6 [Administrative Record (“AR”) 56, 155.] Defendant denied his application on  
7 initial review and reconsideration, and he was found not disabled by an  
8 Administrative Law Judge (“ALJ”) in a March 22, 2013 decision. [AR 12-29, 80-  
9 85, 87-92.] After the Appeals Counsel denied review, Plaintiff appealed to this  
10 Court, which remanded the case for further proceedings – finding error in the ALJ’s  
11 step four determination that Plaintiff could perform his past relevant work. While  
12 the initial case was pending here in District Court, Plaintiff filed a new application  
13 for DIB. Plaintiff was informed in a May 31, 2015 letter that the agency found him  
14 disabled (in the first case) as of March 24, 2013.

15 The ALJ held a hearing on the remanded application on February 20, 2013.  
16 [AR 572-90.] The ALJ noted that Plaintiff requested a closed period of disability  
17 from his initially alleged onset date of May 19, 2010, through March 22, 2013 (i.e.,  
18 up to the date on which the agency determined he was disabled). The ALJ found  
19 him not disabled during the closed period at issue. Plaintiff sought review of the  
20 ALJ’s second decision, which was denied. The present case before the Court  
21 followed.

22 As relevant here, ALJ’s decision under review found that, during the closed  
23 period at issue, Plaintiff had the severe impairments of right shoulder impingement  
24 and osteoarthritis of the knees. [AR 551.] The ALJ then found that Plaintiff did not  
25 have an impairment or combination of impairments that met or medically equaled a  
26 listed impairment. [AR 552.] The ALJ then found that Plaintiff had the following  
27 Residual Functional Capacity (“RFC”):

28 [A] range of light work as defined in 20 CFR 404.1567(b) and SSR 83-

1 10 specifically as follows: the claimant can lift and/or carry 20 pounds  
2 occasionally and 10 pounds frequently; he can stand and/or walk for  
3 four hours out of an eight-hour workday; he can sit for six hours out of  
4 an eight-hour workday; is unlimited with respect to pushing and/or  
5 pulling, other than as indicated for lifting and/or carrying; he can  
6 occasionally perform overhead activities with the right upper extremity;  
7 he can occasionally balance, stoop, kneel, or crouch; he cannot crawl;  
8 he must avoid jobs involving dangerous heavy moving machinery and  
9 unprotected heights.

10 [AR 552.]

11 The ALJ then determined that Plaintiff could not perform his past relevant  
12 work, but considering his age, education, and work experience, that jobs existed in  
13 significant numbers in the national economy that Plaintiff could perform given his  
14 RFC.

15 Plaintiff alleges that the ALJ committed error in two respects. First, Plaintiff  
16 alleges that the ALJ failed to properly weigh the medical opinions, leading to an  
17 improper determination of Plaintiff's RFC. Second, Plaintiff contends that the ALJ  
18 improperly discounted Plaintiff's testimony regarding his pain and limitations. [Pl.  
19 Br. at 1]. Defendant argues that the ALJ's findings, RFC, and decision were correct.

### 21 III. GOVERNING STANDARD

22 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to  
23 determine if: (1) the Commissioner's findings are supported by substantial  
24 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*  
25 *Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm'r*  
26 *Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012) (internal citation omitted).  
27 "Substantial evidence is more than a mere scintilla but less than a preponderance; it  
28 is such relevant evidence as a reasonable mind might accept as adequate to support a

1 conclusion.” *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir.  
2 2014) (internal citations omitted).

3 The Court will uphold the Commissioner’s decision when the evidence is  
4 susceptible to more than one rational interpretation. *See Molina v. Astrue*, 674 F.3d  
5 1104, 1110 (9th Cir. 2012). However, the Court may review only the reasons stated  
6 by the ALJ in his decision “and may not affirm the ALJ on a ground upon which he  
7 did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The Court will not  
8 reverse the Commissioner’s decision if it is based on harmless error, which exists if  
9 the error is “inconsequential to the ultimate nondisability determination, or if despite  
10 the legal error, the agency’s path may reasonably be discerned.” *Brown-Hunter v.*  
11 *Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (internal quotation marks and citations  
12 omitted).

#### 13 14 IV. DISCUSSION

##### 15 A. The Opinions At Issue

16 Plaintiff contends that the ALJ erred by failing to properly consider the  
17 opinions of (1) treating physician, Dr. Ricardo Di Sarli; (2) evaluating orthopedic  
18 surgeon Dr. James Styner; (3) medical expert Dr. Eric Schmitter, and (4) treating  
19 physician Dr. Christopher Ninh, an orthopedic surgeon. Plaintiff argues that the  
20 opinions of these physicians “require that [Plaintiff] be found disabled during the  
21 relevant period,” and the that ALJ’s finding that Plaintiff can perform a range of  
22 light exertional work is “not supported by any evidence.” [Pl. Br. at 4.] The Court  
23 finds that a remand or reversal on this basis is not warranted. The opinions of each  
24 physician and the ALJ’s reasoning will be discussed, as necessary, below. As is  
25 evident from any reasonable review of the ALJ’s opinion, Plaintiff’s contention that  
26 the ALJ’s determination of Plaintiff’s RFC is not supported by “any medical  
27 evidence” is plainly untrue.

## 1. Federal Law

“There are three types of medical opinions in social security cases: those from treating physicians, examining physicians, and non-examining physicians.” *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009); *see also* 20 C.F.R. § 404.1527. In general, a treating physician’s opinion is entitled to more weight than an examining physician’s opinion and an examining physician’s opinion is entitled to more weight than a nonexamining physician’s opinion. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). “The medical opinion of a claimant’s treating physician is given ‘controlling weight’ so long as it ‘is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record.’” *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(c)(2)).<sup>3</sup>

An ALJ must provide clear and convincing reasons supported by substantial evidence to reject the uncontradicted opinion of a treating or examining physician. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (citing *Lester*, 81 F.3d at 830-31). Where such an opinion is contradicted, however, an ALJ may reject it only by stating specific and legitimate reasons supported by substantial evidence. *Bayliss*, 427 F.3d at 1216; *Trevizo*, 871 F.3d at 675. The ALJ can satisfy this standard by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating [her] interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (quoting *Reddick*

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<sup>3</sup> For claims filed on or after March 27, 2017, the opinions of treating physicians are not given deference over the opinions of non-treating physicians. *See* 20 C.F.R. § 404.1520c (providing that the Social Security Administration “will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s), including those from your medical sources”); 81 Fed. Reg. 62560, at 62573-74 (Sept. 9, 2016). Because Plaintiff’s claim for DIB was filed before March 27, 2017, the medical evidence is evaluated pursuant to the treating physician rule discussed above. *See* 20 C.F.R. § 404.1527; [Def. Br. at 5 n.5 (citing Social Security Ruling (“SSR”) 96-2p).]

1 *v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)); *see also* 20 C.F.R. § 404.1527(c)(2)-  
2 (6) (when a treating physician's opinion is not given controlling weight, factors such  
3 as the nature, extent, and length of the treatment relationship, the frequency of  
4 examinations, the specialization of the physician, and whether the physician's  
5 opinion is supported by and consistent with the record should be considered in  
6 determining the weight to give the opinion).

## 7 **2. Dr. Di Sarli**

8 Dr. Di Sarli began treating Plaintiff soon after his alleged 2010 onset date.  
9 Dr. Sarli completed an undated lower extremities impairment questionnaire and a  
10 February 13, 2013 letter for Plaintiff that opined that Plaintiff had severe limitations  
11 due to osteoarthritis in the knees. In his February 2013 letter, Dr. Di Sarli concluded  
12 that Plaintiff was unable to work. [AR 553, 217, 379, 403.]

13 The ALJ considered the longitudinal history of Plaintiff's treatment with Dr.  
14 Di Sarli. The ALJ noted that Dr. Di Sarli had twice noted that Plaintiff could  
15 perform a reduced range of sedentary work, including lifting or carrying up to 20  
16 pounds occasionally and five pounds frequently. Dr. Di Sarli opined that Plaintiff  
17 could sit for two hours in an eight-hour workday and walk for one hour in an eight-  
18 hour workday. Dr. Sarli precluded Plaintiff from pushing, pulling, bending,  
19 stooping, and kneeling. [*Id.*]

20 The ALJ gave minimal weight to these assessments because they were not  
21 supported by the objective evidence in the record, and were, in fact, contradicted by  
22 certain of Dr. Sarli's findings and Plaintiff's self-reports. [AR 553.] The ALJ noted  
23 that "the doctor marked the examination findings 'within normal limits' for much of  
24 the claimant's course of care with him." [AR 553 (citing AR 512-21).] During a  
25 November 2010 visit (within the closed period), Plaintiff had only mild signs of  
26 swelling and had adequate range of motion up to 120 degrees of both knees with  
27 normal knee cap tracking and no crepitation. Plaintiff reported that his knee pain  
28 was relieved with Meloxicam when he took it. [AR 554; 318] Thus, as the

1 Commissioner notes in his brief, while Plaintiff pointed to certain of Dr. Sarli's  
2 findings in his favor, he "ignores the other nine treatment records from Dr. Di Sarli  
3 following [his April 11] appointment which revealed normal physical  
4 examinations." [Dkt. 18 at 10 (citing AR 513-21, 553).]

5 In giving Dr. Di Sarli's opinion minimal weight, the ALJ also discussed the  
6 findings of a consultative orthopedic evaluation performed by Dr. Vincente Bernabe  
7 in January 2012. To that point in time – well within the closed period from 2010 to  
8 2013 – Dr. Bernabe found, and the ALJ noted specifically, that Plaintiff reported to  
9 him that he was not taking any pain relief medication other than Tylenol, was not  
10 pursuing any other treatment for pain relief, and denied ongoing physical therapy or  
11 use of knee braces or a cane [AR 554 (citing AR 256).] Dr. Bernabe's report also  
12 noted that Plaintiff had normal muscle strength and full range of motion, that "range  
13 of motion was painless," and his gait was normal. [*Id.*] Although the ALJ  
14 ultimately discounted Dr. Bernabe's opinion that Plaintiff could perform a full range  
15 of medium work with no additional restrictions, he did so because the physician's  
16 ultimate conclusion overstated Plaintiff's RFC. The ALJ was nevertheless entitled  
17 to rely on Dr. Bernabe's objective findings from during the closed period in crafting  
18 Plaintiff's RFC and making his ultimate determination that Plaintiff was not  
19 disabled.

### 20 **3. Dr. James Styner**

21 Plaintiff was evaluated by Dr. Styner in November 2012. The ALJ properly  
22 discounted Dr. Styner's conclusion that Plaintiff was limited to sedentary work for  
23 several specific and legitimate reasons. For example, Plaintiff admitted in  
24 connection with his evaluation that he was only pursuing conservative care for knee  
25 pain, and had not received any treatment for his alleged shoulder, arm, or back pain.  
26 [AR 554 (citing AR 357).] Plaintiff had full motor strength and his knees showed  
27 no evidence of instability or swelling. [AR 555; AR 360-62.] The ALJ noted that  
28 Dr. Styner's November assessment that Plaintiff was limited to sedentary work was

1 not “supported by the clinical objective evidence at the hearing level, which conveys  
2 no significant diagnostic workups or treatment for the claimant’s shoulder and back  
3 pain.” [AR 555.]

4 Dr. Styner also examined Plaintiff at a follow-up visit in March 2013, the last  
5 month of the relevant closed period. In discussing the March follow-up visit, the  
6 ALJ noted that Plaintiff reported his right knee was doing well after an injection,  
7 and he only had increased left knee pain “after doing a lot of walking while visiting  
8 in Mexico.” [AR 555 (quoting AR 505).] While acknowledging that Plaintiff had  
9 knee pain, the ALJ found that “the objective examination findings and the  
10 claimant’s reported activities of daily living, including the noted trip to Mexico,  
11 despite conservative treatment, suggest that the claimant’s symptoms were managed  
12 adequately prior to the date he was found disabled by the State Agency. As already  
13 noted, the file does not contain workups or treatment for shoulder or back pain,  
14 which also renders the range of sedentary work assessed by Dr. Styner (and Dr. Di  
15 Sarli) overly restrictive.” [AR 55.] The ALJ’s thorough and careful review of the  
16 medical evidence and Plaintiff’s activities of daily living “setting out a detailed and  
17 thorough summary of the facts and conflicting clinical evidence, stating his  
18 interpretation thereof, and making findings,” *Garrison*, 759 F.3d at 1012, satisfies  
19 the required standard in this case. Accordingly, the ALJ’s rejection of Dr. Styner’s  
20 ultimate opinion was supported by substantial evidence.

#### 21 **4. Dr. Eric Schmitter**

22 The ALJ gave significant but not great weight to the opinion testimony of Dr.  
23 Eric Schmitter. [AR 555.] In fact, the vast majority of Dr. Schmitter’s testimony  
24 supports the ALJ’s findings and refutes Plaintiff’s claim of complete disability. Dr.  
25 Schmitter opined that a light range of work, with reduced standing and walking was  
26 appropriate. Plaintiff argues, however, that one particular limitation recommended  
27 by Dr. Schmitter – that Plaintiff is limited to standing or walking for no more than  
28 two hours in an eight-hour workday, rather than the four-hour limitation found by



1 the ALJ – should have been incorporated into Plaintiff’s RFC, which would render  
2 him disabled. [Pls. Br. at 11.] The ALJ noted that Dr. Schmitter’s assessment of  
3 light work was appropriate, but that in light of the other medical evidence (some of  
4 which is discussed above, and including Plaintiff’s self-reported activities of daily  
5 living during the period (the Mexico trip, for example), and his “essentially normal  
6 range of motion of the knees and conservative treatment,” there was little in the  
7 record to support the severe, two-hour limitation to standing and walking. [AR 555-  
8 56.] Given that the assessment of an individual’s RFC is an issue reserved to the  
9 ALJ, the ALJ’s evaluation and balancing of the evidence here, including the  
10 opinions of Dr. Schmitter, was entirely appropriate. *Chaudhry v. Astrue*, 688 F.3d  
11 661, 671 (9th Cir. 2009) (ALJ need not accept the opinion of treating physician if it  
12 is conclusory and inadequately supported by clinical findings); *Hensley v. Colvin*,  
13 600 Fed. Appx. 526, 527 (9th Cir. 2015) (unpublished) (ALJ properly rejected  
14 opinion that “was inconsistent with [claimant’s] reported daily activities, which  
15 included attending to personal care, cooking, cleaning, shopping for groceries,  
16 taking the bus and swimming for exercise”).

## 17 **5. Dr. Christopher Ninh**

18 Plaintiff correctly points out that the ALJ did not address the opinion of Dr.  
19 Christopher Ninh. The Court concludes for multiple reasons, however, that any  
20 error was harmless. Dr. Ninh first began treating plaintiff in October 2014, well  
21 after the relevant period under review. [AR 911-12.] Then, in 2016, more than  
22 three years after the closed period at issue, he issued an unsupported, conclusory  
23 opinion that Plaintiff had – *since May 2010, four years before he met Plaintiff, and*  
24 *six years before his opinion was rendered* – “constant pain” (although he noted that  
25 Plaintiff only took NSAIDS to treat his pain), could sit for more than six hours, had  
26 to elevate his legs (which, notably, is not considered palliative for knee arthrosis, the  
27 condition with which he diagnosed Plaintiff), could stand or walk for one hour or  
28 less, and would miss less than one day of work a month. [AR 911-13, 915.] Dr.

1   Ninh did not provide or cite to any objective findings (other than some unspecified  
2   “x-ray images”) to support his opinions. Moreover, some of Dr. Ninh’s conclusions  
3   were at odds with Plaintiff’s own claims. [AR 155, 914 (Plaintiff does not complain  
4   of problems concentrating, while Dr. Ninh opines that Plaintiff’s symptoms impede  
5   concentration).] Given the opinions of Dr. Bernabe, Dr. Schmitter, and others on  
6   whom the ALJ relied,<sup>4</sup> including the objective findings and other medical evidence  
7   of record showing mostly unremarkable findings from the relevant period prior to  
8   Dr. Ninh’s treatment of Plaintiff, the ALJ’s failure to specifically address the  
9   limitations assessed by Dr. Ninh was harmless. *Molina v. Astrue*, 674 F.3d 1111,  
10   1115 (9th Cir. 2012) (court must “look at the record as a whole to determine  
11   whether the error alters the outcome of the case”); *Burch v. Barnhart*, 400 F.3d 676,  
12   679 (9<sup>th</sup> Cir. 2005) (“A decision of the ALJ will not be reversed for error that are  
13   harmless.”).

#### 14       **B. Plaintiff’s Subjective Symptom Testimony**

15       Plaintiff contends that the ALJ failed to provide sufficient reasons for  
16   rejecting his testimony regarding his subjective symptoms and functional  
17   limitations. [Pl. Br. (Dkt. 13) at 13-16.]

18       Once a disability claimant produces evidence of an underlying physical or  
19   mental impairment that could reasonably be expected to produce the symptoms  
20   alleged and there is no affirmative evidence of malingering, the ALJ must offer  
21   “specific, clear and convincing reasons” to reject the claimant’s testimony about the  
22   severity of her symptoms. *Trevizo*, 871 F.3d at 678 (citation omitted); *Smolen v.*  
23   *Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). The ALJ must specifically identify the  
24   testimony that is being rejected and explain what evidence undermines that

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26       <sup>4</sup>     The Court notes that Plaintiff’s claim that the ALJ’s light work RFC is  
27   “unsupported by any medical evidence” [Dkt. 13 at 4] is further belied by several  
28   additional medical source opinions Plaintiff entirely fails to acknowledge. Two  
State Agency physicians, Drs. Chan and Phillips, also provided opinions that  
support the ALJ’s findings.

1 testimony. *See Treichler v. Comm’r, Soc. Sec. Admin.*, 775 F.3d 1090, 1102-03 (9th  
2 Cir. 2014); *Reddick*, 157 F.3d at 722; *see also Trevizo*, 871 F.3d at 679, n.5  
3 (clarifying that “assessments of an individual’s testimony by an ALJ are designed to  
4 ‘evaluate the intensity and persistence of a claimant’s symptoms . . .’ and not to  
5 delve into wide-ranging scrutiny of the claimant’s character and apparent  
6 truthfulness”) (quoting SSR 16-3p).

7 Plaintiff testified, among other things, that he could only walk for 10 to 15  
8 minutes at a time, has throbbing pain in his right shoulder and numbness in his  
9 hands, can only stand in place for 3 to 5 minutes, and is in pain when he sits for 10  
10 to 20 minutes. [AR 48-49 (from transcript of February 20, 2013 hearing).]

11 The ALJ found that although Plaintiff’s medically determinable impairments  
12 could reasonably be expected to cause some of Plaintiff’s alleged symptoms,  
13 Plaintiff’s allegations concerning the intensity, persistence, and limiting effects of  
14 his symptoms were not credible to the extent alleged. [AR 552.] The Court  
15 concludes that the ALJ provided specific, clear and convincing reasons for  
16 discounting Plaintiff’s subjective symptom testimony. *See Trevizo*, 871 F.3d at 678;  
17 *Smolen*, 80 F.3d at 1284.

18 The ALJ stated that Plaintiff’s testimony concerning the intensity, persistence,  
19 and limiting effects of his symptoms were not consistent with the medical and other  
20 evidence “for the reasons explained in this decision.” [AR 552.] These reasons  
21 were several.

22 As an initial matter, as discussed above and detailed further in the ALJ’s  
23 opinion, many of Plaintiff’s treatment records for the period in question reflected  
24 unremarkable physical examinations. While medical evidence alone is not a basis  
25 for rejecting pain testimony, it is one factor that the ALJ is permitted to consider.  
26 *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Burch v. Barnhart*, 400  
27 F.3d 676, 681 (9th Cir. 2005).

1           The ALJ specifically relied on inconsistencies between a claim of total  
2   disability and Plaintiff's self-reported activities of daily living as an additional  
3   reason for discounting Plaintiff's testimony. [AR 553.] The ALJ noted that  
4   Plaintiff's Exertional Activities Questionnaire from November 21, 2011, during the  
5   closed period, indicated that he could walk for no more than thirty minutes, climb  
6   about 10 steps with difficulty, and lift light items such as a chair. [*Id.*] He also  
7   indicated that he could do some household chores including sweeping, doing dishes,  
8   dusting and mopping with breaks between chores. He could drive a car and mow  
9   the lawn with an electric mower. He reported at that time that he was using  
10   prednisone and Tylenol for pain control. [*Id.*] The ALJ reasonably found that these  
11   self-reported activities of daily living were consistent with the ability to do light  
12   work as defined in Plaintiff's RFC, rather than with the extreme limitations to which  
13   he testified. [*Id.*] This reason, alone, meets the clear and convincing standard  
14   required to support the ALJ's decision.

15           While unnecessary, the ALJ provided additional specific reasons to reject  
16   Plaintiff's testimony of extreme limitations. For example, the ALJ also reasoned  
17   that Plaintiff's self-reports to medical professionals were inconsistent with disabling  
18   pain. [*E.g.*, AR 555 (Plaintiff only had serious knee pain after walking for extended  
19   periods during a trip to Mexico; this self-report was in 2013, late in the closed  
20   period. Given that Plaintiff's condition was degenerative, lack of disabling pain late  
21   in the closed period is a good indication that Plaintiff's impairment was even less  
22   earlier on).] The inconsistency in Plaintiff's statements was another specific, clear  
23   and convincing reason on which the ALJ could properly rely in rejecting Plaintiff's  
24   subjective symptom testimony. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th  
25   Cir. 2001) (ALJ may use "ordinary techniques of credibility evaluation," such as  
26   considering the claimant's reputation for truthfulness and any inconsistent  
27   statements in her testimony); *Smolen*, 80 F.3d at 1284 (ALJ may consider "prior  
28   inconsistent statements concerning the symptoms, and other testimony by the

1 claimant that appears less than candid”); *Johnson v. Shalala*, 60 F.3d 1428, 1432  
2 (9th Cir. 1995) (ALJ may properly rely on inconsistencies in the claimant’s  
3 testimony).

4 Plaintiff’s conservative treatment was also inconsistent with the level of pain  
5 and disability to which Plaintiff testified at the hearings before the ALJ. An ALJ  
6 may properly rely on the fact that only routine or conservative treatment has been  
7 prescribed. *See Johnson*, 60 F.3d at 1434; *Meanel v. Apfel*, 172 F.3d 1111, 1114  
8 (9th Cir. 1999) (finding that plaintiff’s claim that she experienced pain “approaching  
9 the highest level imaginable was inconsistent with the ‘minimal, conservative  
10 treatment’ that she received”). Thus, Plaintiff’s relatively routine and conservative  
11 treatment was a specific, clear and convincing reason to discount Plaintiff’s  
12 subjective symptom testimony.

13 Accordingly, reversal is not warranted based on the ALJ’s consideration of  
14 Plaintiff’s testimony regarding the nature and severity of his symptoms.

## 15 16 V. CONCLUSION

17 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the  
18 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

19 **IT IS SO ORDERED.**

20  
21 DATED: August 09, 2019

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23 \_\_\_\_\_  
24 GAIL J. STANDISH  
25 UNITED STATES MAGISTRATE JUDGE  
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